

Remarks

This is a resubmission of an amendment filed December, 2006 in the present application in response to the office action of January 8, 2007. No substantive change has been made to the previously submitted amendment for ease of consideration. After amendment, claims 54-87 are remain pending in the present application after cancellation of claims 1-53. The presently pending claims are directed to subject matter which is consistent with the Examiner's decision to withdraw the species restriction and elect to examine the invention as set forth on page 3 of the August 17, 2006 office action. Support for the amendment to claims can be found throughout the originally filed application and claims. Support for R⁸ also being H may be found in the specification at page 6, line 12.

Applicants note the Examiner's statement on page 3 of the August, 2006 office action regarding the elected species which was submitted with the response to the restriction requirement. That statement indicates that the Examiner does not believe that the elected species compound falls within group VII. Applicants respectfully traverse that statement inasmuch as the elected species clearly does fall within group VII (formula IV) and original claim 1. The proviso in claim 1 about which the Examiner writes refers to compounds of general formula II, not general formula IV (or any other formula of claim 1), which clearly embraces the elected species and is not associated with a proviso term in the claims.

The Examiner has variously objected to or rejected the originally filed claims under 35 U.S.C. §101, §112, second and fourth paragraphs and §102. Applicants shall address each of these rejections in the sections which follow.

The Claim Objections

Original claims 1, 2, 6, 7, 22, and 42-43 were objected to for containing withdrawn or non-elected subject matter for the reasons which are stated in the August office action on page 4. In response, Applicants have cancelled all of the original claims and in their place, have submitted new claims 54-87, which specifically address the subject matter the Examiner has agreed to examine (page 3, top). Consequently, it is respectfully submitted that the presently pending claims address the Examiner's objections in their entirety.

The 35 U.S.C. §101 Rejection

The Examiner rejected originally filed claims 42-43 under 35 U.S.C. §101 for the reasons which are stated in the office action on page 3, bottom. Applicants have cancelled these claims from the application (which are directed to EPO Swiss-style composition/use claims) and consequently, the Examiner's rejection has been rendered moot.

The 35 U.S.C. §112, second and fourth paragraphs

The Examiner has rejected originally filed claims 1-9, 11, 13-16, 22 and 42-43 under 35 U.S.C. §112, second paragraph for the reasons which are set forth in the August, 2006 office action on page 5. Applicants have presented new claims 54-87 which clearly address any and all rejections the Examiner may have made with respect to the originally filed claims. Note that claims 42-43 have been cancelled, thus addressing that rejection. Note that the term "effective amount" in the composition claims (in particular, claim 70) has been amended to reflect a more definite term. Support for that term may be found in the specification on page 12, in the second full paragraph.

Regarding the Examiner's rejection of claims under 35 U.S.C. §112, 4th paragraph, it is respectfully submitted that inasmuch as claim 11 has been cancelled, this rejection has been rendered moot.

It is respectfully submitted that the newly submitted claims fully address the Examiner's §112 rejections.

The §102(b) Rejections

The Examiner rejected originally filed claims 1, 2 and 22 as being anticipated by Hrebecky, et al., *Collect. Czech. Chem. Comm.*, 58, pp. 1668-1674, 1993 ("Hrebecky, et al.") for the reasons which are stated in the office action on page 7. In particular, the Examiner cites compound IX of Hrebecky, et al. as anticipating the originally filed claims because it has H in the R², R^{3a} and R^{3b} positions corresponding to the presently claimed compounds and methyl in the R³ position corresponding to the presently claimed compound. A review of compound IX of Hrebecky shows that compound IX actually has an *ethyl*, not a methyl group, at the

corresponding R³ position. In contrast, the newly presented claims do not claim an ethyl group at the R³ position of a uracil analog and consequently, the presently pending claims are not anticipated by Hrebecky.

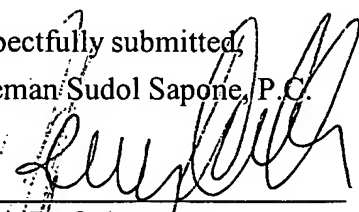
The Examiner also rejected claim 1 as being anticipated by Haraguchi, et al., *J. Org. Chem.*, 61, 821-858, 1996 ("Haraguchi, et al."), in particular, compound 26, which contains a cytosine base with a propenyl group at the position corresponding to R³ in the presently claimed compounds. Note that with respect to the newly presented claims, the presently claimed cytosine analog does not have a propenyl group at the 4' position corresponding to R³. Consequently, the newly presented claims are not anticipated by Haraguch, et al.

It is respectfully submitted that the newly presented claims 54-87 are not anticipated by the art of record and are in compliance with the requirements of 35 U.S.C..

For the above reasons, Applicant respectfully asserts that the claims set forth in the amendment to the application of the present invention are now in compliance with 35 U.S.C. Applicants respectfully submit that the present application is now in condition for allowance and such action is earnestly solicited. Applicants have cancelled 53 claims and added 34 claims (two independent).

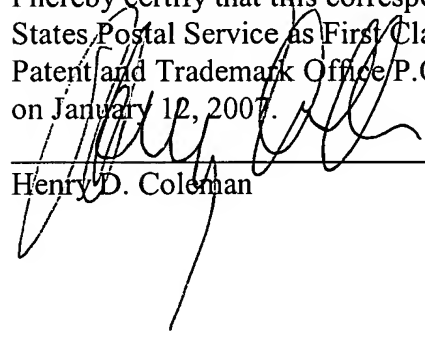
No fee is due for the presentation of this amendment. An extension of time of one month and fee in the amount of \$60 was previously submitted. If any additional fee is due or any overpayment has been made, please charge/credit Deposit Account No. 04-0838.

Respectfully submitted,
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: "United States Patent and Trademark Office P.O. Box 1450 Alexandria, Virginia 22313-1450" on January 12, 2007.


Henry D. Coleman